

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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UNITED STATES OF AMERICA,	)	
	)	NO. CR12-133RSM
Plaintiff,	)	
	)	SEATTLE, WASHINGTON
v.	)	10/15/2013
	)	
MARK F. SPANGLER,	)	
	)	TRIAL - DAY 1
Defendant.	)	
	)	

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VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For Plaintiff: CARL H. BLACKSTONE  
FRANCIS FRANZE-NAKAMURA  
MICHAEL J. LANG  
United States Attorney's Office

For Defendant: JON R. ZULAUF  
Zulauf & Chambliss  
  
JOHN R. CARPENTER  
Federal Public Defender's Office  
  
ALAN ZARKY

Proceedings recorded by mechanical stenography, transcript  
produced by Reporter on computer.

## PROCEEDINGS

THE COURT: Good morning to all of you. Please be seated. Ladies and gentlemen, as you have just heard, I am Judge Martinez. Welcome to our courtroom. You have been summoned to this court to serve as potential jurors in this case.

In a moment, I will formally introduce the case, the attorneys. But, first of all, out of curiosity, just for my sake, and maybe to help counsel a little bit, how many of you have ever been involved in the jury selection process before, anywhere, anytime, regardless of whatever level of court? Just how many of you have ever done this before? That is quite a bit. I would say maybe a little more than half of you. Great.

I assume all of you have read the juror handbook, saw the little video that they give you downstairs. Having reviewed those materials, I think you are all aware that the very first part of any trial involves the selection of the jury.

Under our Constitution, a defendant in a criminal case, which this is, charged by the government with the commission of a crime, has the right to be tried before an impartial jury made up of 12 citizens from our community.

All of you have been randomly selected off a major jury wheel to be here today, and then you have been put again, by

1 the computer downstairs in the jury room, by a random number  
2 generator, into this particular order. Every single one of  
3 you should have gotten a card with a number on it, correct?  
4 Do all of you have one?

5 All right. We will be using those as we go through the  
6 process. And let me, first of all, formally introduce the  
7 case and the parties. As indicated, this is the matter of  
8 the United States of America versus Mark Francis Spangler.

9 The government is represented by three Assistant United  
10 States Attorneys: Carl Blackstone, Mike Lang, and Francis  
11 Franze-Nakamura.

12 Gentlemen, would you rise?

13 MR. LANG: Good morning.

14 MR. BLACKSTONE: Good morning.

15 MR. FRANZE-NAKAMURA: Good morning.

16 THE COURT: The defendant is present, represented by  
17 his counsel, Mr. Jon Zulauf and John Carpenter.

18 Mr. Zulauf, would you please introduce Mr. Spangler?

19 MR. ZULAUF: To my right is Mark Spangler.

20 THE DEFENDANT: Good morning.

21 THE COURT: All right. As we get ready to do the  
22 selection process, here is exactly how we are going to do  
23 this: In order to begin the jury selection process, you will  
24 all be placed under oath, and then a series of questions will  
25 be asked of you as a panel and as individuals. We need to

1 swear you in, every single prospective juror, before that  
2 starts.

3 The questions are not meant to embarrass you in any way.  
4 They are simply meant to elicit information from which the  
5 attorneys can then use to make their selections. So when you  
6 answer these questions, please be as straightforward and as  
7 honest as you possibly can. Let the attorneys do their job.  
8 Your job is not to try to figure out, why am I being asked  
9 that? What does this mean? No. You just answer as best you  
10 can, and then let the attorneys do their job.

11 All right. So in order to start the process, like I said,  
12 we need to swear you all in. Would every prospective juror  
13 please stand, raise your right hand, and pay attention to the  
14 oath.

15 (Prospective jurors sworn in.)

16 (Voir dire, not herein transcribed.)

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18 (Jury sworn in.)

19 THE COURT: All right. Let me take a moment to  
20 introduce the members of the lower bench here.

21 The hardest working person in the courtroom, our court  
22 reporter, Kari McGrath. You know, I talk for a while, and  
23 then I'm quiet. The attorneys talk for a while, and then  
24 they are quiet, then the witnesses. You will see, she is  
25 working the entire time. And it is actually not a very easy

1 job to do. It is kind of tough. But she does a magnificent  
2 job. We are very lucky to have her with us.

3 Ms. Cuaresma you have already met. Laurie Cuaresma is our  
4 court clerk. She job shares with Ms. Lowell Williams, who  
5 you will see later on in the week as well.

6 And over to my right, kind of hidden behind all of this  
7 stuff over here, is my law clerk, Stephanie Safdi, assigned  
8 to this particular case.

9 So now that you are the jury in this case, let me take a  
10 few moments to tell you something about your duties as jurors  
11 and give you some preliminary instructions. At the end of  
12 the trial, I will give you a more detailed set of  
13 instructions that will control your deliberations.

14 When you deliberate, it will be your duty to weigh and  
15 evaluate all the evidence received in the case, and in that  
16 process, decide the facts. The way I look at it, we both  
17 serve as judges in the case. You judge the facts, and I have  
18 nothing to do with the facts at all. Whether I believe a  
19 witness or don't believe a witness doesn't make one bit of  
20 difference, because I am not the one judging that. That is  
21 up to you.

22 I decide the law to give you. And I am not going to ask  
23 any of you for your advice before I give you those set of  
24 instructions at the end of the case. To the facts as you  
25 find them, you apply the law that I give to you, whether you

1 agree with that law or not. You are to decide the case  
2 solely on the evidence and the law before you. You must not  
3 be influenced by any personal likes, dislikes, opinions,  
4 prejudices, or sympathy. Please do not take anything I may  
5 say or do during the trial as indicating what I think of the  
6 evidence or what your verdict should be. That is entirely up  
7 to you.

8 Remember, now, this is a criminal matter brought by the  
9 United States government. As I indicated, the government  
10 charges the defendant with the following offenses: Counts 1  
11 through 25, charged with wire fraud; Counts 26 through 32,  
12 charged with money laundering; and, finally, in Count 33,  
13 charged with investment advisor fraud.

14 Now, as I told you, I will give you a detailed set of  
15 instructions at the end. But I want you just to kind of get  
16 an understanding of what those allegations are. And they are  
17 only allegations at this point in time.

18 Those charges that have been brought are contained in what  
19 is known as the indictment. That is the charging document  
20 that is returned by a grand jury. It simply describes those  
21 charges. The indictment itself is not evidence. It is not  
22 proof of anything at all.

23 Mr. Spangler has pled not guilty to each and every one of  
24 the charges. And that means he is presumed innocent unless  
25 and until the government proves the defendant guilty beyond

1 any reasonable doubt. In addition, the defendant always has  
2 the right to remain silent and never has to prove innocence  
3 or present any evidence if he does not wish.

4 In order to help you follow the evidence, let me give you  
5 a brief summary of the elements of the crimes which the  
6 government must prove if they want to make their case.

7 The elements of wire fraud are that a defendant knowingly  
8 devised a scheme or plan to defraud or to obtain money by  
9 means of false or misleading statements that were capable of  
10 influencing a person to part with money, that the defendant  
11 acted with the intent to defraud, deceive, or cheat, and that  
12 the defendant used interstate wire to carry out an essential  
13 part of that scheme.

14 The elements of money laundering are that a defendant  
15 knowingly engaged in a monetary transaction, that the  
16 defendant knew the transaction involved criminally-derived  
17 property of a value over \$10,000, that the property was in  
18 fact derived from wire fraud or mail fraud, and that the  
19 transaction occurred in the United States.

20 The elements of investment advisor fraud are that the  
21 defendant was an investment advisor who engaged in a scheme  
22 or plan to defraud his investors through the use of  
23 interstate wire or other instrumentalities of interstate  
24 commerce.

25 So what is evidence? First of all, let me just ask. I

1 can't remember now, in all of the voir dire process that we  
2 did. How many of you have actually served on a jury before?  
3 All right. Quite a few of you.

4 The evidence you are to consider in deciding what the  
5 facts are consists of the following things: The sworn  
6 testimony of any witness from the stand, the exhibits that  
7 are received into evidence, and any facts to which the  
8 parties stipulate or agree to.

9 Now, what does it mean when an exhibit is received into  
10 evidence? Whenever a witness takes the stand and is shown an  
11 exhibit that has not been admitted yet, counsel will ask the  
12 witness to identify that, and one side or the other will move  
13 to admit it into evidence.

14 Many exhibits are stipulated to by both sides. Some are,  
15 of course, not. They may be contested. Either way, the  
16 court makes a ruling on it. If the exhibit is admitted into  
17 evidence, what it means for you as jurors is that it will be  
18 available for you in the jury room at the end of the trial,  
19 when you begin deliberations.

20 If the exhibit is not admitted, whatever testimony the  
21 court has allowed is fair game for you to consider in any way  
22 you want to, but the exhibit itself will not physically be  
23 back there with you. Understand?

24 All right. What is not evidence? The following things  
25 are not evidence, and you are not to consider them as



1 evidence in deciding the facts of this case: The statements  
2 and the arguments of the attorneys are not evidence; the  
3 questions and objections made by the attorneys are not  
4 evidence; any testimony that you are instructed by me to  
5 disregard; and anything you may see or hear when the court is  
6 not in session, even if what you see or hear is done or said  
7 by one of the parties or by one of the witnesses. Make  
8 sense?

9 All right. Evidence can be either direct or  
10 circumstantial. I think you heard some of that during the  
11 actual voir dire process itself. Direct evidence is direct  
12 proof of a fact, such as testimony by a witness about what  
13 that witness personally saw or heard or did. Circumstantial  
14 evidence is indirect evidence; that is, it is proof of one or  
15 more facts from which one can find another fact.

16 What does all that mean? Let me give you just one real  
17 brief example. If a witness takes the stand and says, "It  
18 rained at my house last night. I looked outside, and it was  
19 raining. Rain was falling on the lawn," that's direct  
20 evidence. They saw the rain coming down. It rained.

21 You get another witness that says, "I think it rained at  
22 my house last night. I got up and the lawn was all wet."  
23 Well, that could be, or it could be the sprinklers went off.  
24 It could be the street-cleaning crew came by. It could be  
25 all sorts of things, right? Do you see the difference?

1       You as jurors are to consider both direct and  
2       circumstantial evidence, either can be used to prove any  
3       fact. The law makes no distinction between the weight to be  
4       given to either direct or circumstantial evidence. It is for  
5       you as a juror to decide how much weight to give to any item  
6       of evidence.

7       Okay. There are rules of evidence that control what can  
8       be received into evidence. When a lawyer asks a question or  
9       offers an exhibit, and a lawyer on the opposing side thinks  
10      that is not permitted by those rules, then that lawyer has  
11      the duty to object. If the court overrules the objection,  
12      the question will be answered, and the exhibit may be  
13      received. If the court sustains the objection, the question  
14      cannot be answered, or the exhibit cannot be received.

15      What that means for you is as follows: Whenever the court  
16      sustains an objection to a question, you must ignore the  
17      question and not try to guess what the answer would have been  
18      if that witness had been allowed to answer it.

19      Sometimes, as I indicated previously, I may order that  
20      evidence be stricken from the record and that you disregard  
21      it or ignore it. And that means exactly that, that when you  
22      are deciding the case ultimately, you are not to consider the  
23      evidence that you were told to disregard.

24      In deciding the facts in any case, you may have to decide  
25      which testimony to believe, which testimony not to believe.

1 You are free to believe everything a witness says, or part of  
2 it, or none of it.

3 In considering the testimony of any witness, you may take  
4 into account the following things: The witness' opportunity  
5 and ability to see or hear or know the things testified  
6 about; the witness' memory; the witness' manner while  
7 testifying; the witness' interest in the outcome of the case,  
8 if any; the witness' bias or prejudices, again, if any;  
9 whether other evidence contradicted the witness' testimony;  
10 the reasonableness of the witness' testimony in light of all  
11 the evidence presented; and any other factors that bear on  
12 believability.

13 The weight of the evidence as to a fact does not  
14 necessarily depend on the number of witnesses who testify  
15 about it.

16 All right. Let me talk a little bit about your conduct as  
17 jurors and some important things about -- earlier I mentioned  
18 the Internet. Let me clarify about what I was trying to say.  
19 First, keep an open mind throughout the entire trial. You  
20 are not to decide what the verdict should be until you and  
21 your fellow jurors have completed your deliberations at the  
22 very end of the case.

23 A criminal trial is a very highly structured event. The  
24 government always gets to go first. They always get to put  
25 on all of their evidence before the defense even has an

1 opportunity, should they wish to do so. So that is why you  
2 need to keep that open mind throughout the entire process.

3 Secondly, because you must decide the case based only on  
4 the evidence received in the case and on the instructions of  
5 law that apply, you must not be exposed to any other  
6 information about the case or the issues it involves during  
7 the course of your jury duty.

8 Thus, until the end of the case, or until the court tells  
9 you otherwise, you are not to communicate with anyone in any  
10 way, and do not let anyone else communicate with you in any  
11 way about the merits of the case or anything to do with it.  
12 This includes discussing the case in person, in writing, by  
13 phone, electronically, via email, text messaging, Twitter,  
14 Internet chat rooms, blogs, websites. I can't even get them  
15 all. But you know what I'm talking about.

16 This has been actually an ongoing problem in the United  
17 States recently, with the advent of the Internet. And it  
18 tends to -- well, I'm not going to pick on younger people,  
19 but it tends to apply to the younger generation, because they  
20 are so used to communicating in that way. You can't do that.

21 You are not allowed to talk to counsel. They are not  
22 allowed to talk with you. If you go home and you start  
23 Googling stuff and pulling up information just because you  
24 think, oh, I could be a more informed juror, you are actually  
25 doing a complete disservice to the parties. And if that

1 comes out, it could cause a mistrial.

2 So until you get the case for deliberations, this  
3 instruction continues to apply to communicating with everyone  
4 else, including your family members, your employers, the  
5 media, the press, the people involved in the trial, or even  
6 each other.

7 Now, that is changing in some areas. When you go back for  
8 our breaks, as we start the trial itself, you will not be  
9 allowed to discuss the case. There are some jurisdictions,  
10 Arizona, for example, experimenting with allowing the jurors  
11 to discuss it as it goes along. Now, there are other  
12 instructions that are very important, because it is a highly  
13 structured event, et cetera, et cetera. Keep things in mind,  
14 but they are experimenting with things like that.

15 Until those of us here see proof that it works better one  
16 way or the other, we are sticking to the old way. You are  
17 not allowed to discuss it. That, I think, in previous  
18 jurors' experience, has been one of the most frustrating  
19 things, that you really can't talk about it. You are  
20 absorbing all this information. The attorneys are telling  
21 you that we are going for four to six weeks maybe on this  
22 case, and yet you are not allowed to talk to anybody. That  
23 is extremely frustrating. But it is absolutely necessary to  
24 be able to do your job as a fair and impartial juror.

25 Because you will receive all the evidence and legal

1 instructions you properly may consider to return a verdict,  
2 again, you have to be very, very careful not to even  
3 accidentally be exposed to anything. Don't read or listen to  
4 any news or media accounts or commentary about the case or  
5 anything to do with it.

6 You can't do any research, as I told before. But on the  
7 reading part of it, or being exposed to it, I don't know how  
8 many of you regularly read the paper. I am old enough, I  
9 don't do it on screen. I still like the newspaper, even  
10 though it is getting smaller all the time. I still like the  
11 thing in my hand in the morning, with a cup of coffee, and  
12 looking at it. If you do the same thing, then have someone  
13 else in your family, someone else that lives with you go  
14 through it first. Go through the local section, especially.  
15 And if there is anything to do with this case, just cut that  
16 out and save it for the end of the trial.

17 At the end of the trial, when the jurors are dismissed,  
18 all these instructions will be done away with, and you can  
19 talk about the case to your heart's content. But between now  
20 and then, please, you can't communicate with anyone about it.  
21 You can't be exposed to any information that might influence  
22 you.

23 First of all, one thing I can tell you, after 25 years of  
24 being on the bench, is how many times reporters, media  
25 people, get it wrong. And I think many of you who have

1 served as jurors in the past go, wait, I was a juror, and  
2 that wasn't what happened at all. So you can't tell.

3 The law requires these restrictions to ensure the parties  
4 have a fair trial based on the same evidence and that each  
5 party has had an opportunity to address. A juror who  
6 violates these restrictions jeopardizes the fairness of the  
7 proceeding. As I said, a mistrial could result.

8 If any juror is exposed to any outside information, I want  
9 you to do the following thing: If it happens to you, if you  
10 get exposed to somebody, one, don't repeat it to anyone else  
11 on the jury, all right? Don't say, oh, listen to what  
12 happened to me, look what I saw. No. Two, let our court  
13 clerk know as soon as possible, away from everybody else's  
14 hearing. I will then let the attorneys know. We will  
15 probably bring you out individually, find out what you were  
16 exposed to, and how to deal with it at that point in time.  
17 All right?

18 So does that mean you can't use the Internet at all? No,  
19 of course not. But it means that if you accidentally, as you  
20 are using the Internet or going through it or whatever, see  
21 anything that comes up along these lines, please, just stay  
22 away from it.

23 In fact, I think the best way is to just not look at  
24 anything that has to do with fraud or investment advising or  
25 anything else like that. Just stay away from that, because

1 that of course will then reduce the odds that you might be  
2 accidentally exposed to any information about this particular  
3 case.

4 At the end of the trial, you will have to make your  
5 decision based on what you recall of the evidence. You will  
6 not have a written transcript of the trial. So I urge you to  
7 pay close attention to the testimony as it comes out.

8 Now, you will be allowed to take notes, if you wish, to  
9 help you remember the evidence. What we will do is we will  
10 pass out little notebooks for each of you and a pen. On the  
11 front of that notebook should just be your juror number, not  
12 a name or anything, just 1 through 16. Those always stay  
13 back in the jury room or in the courtroom when you have them.  
14 When you leave for breaks or you leave at the end of the day,  
15 put them all back there. Don't take them with you.

16 If you do take notes, please keep them to yourself until  
17 you and your fellow jurors go to the jury room to begin your  
18 deliberations. Do not let note-taking distract you from  
19 being attentive. The attorneys have a concern with people  
20 taking notes, because remember one of the things we talked  
21 about, about judging credibility, is the witness' manner  
22 while testifying? Well, if you are too busy doing this  
23 (indicating), you are not going to be looking up there to see  
24 all those things, right?

25 It's the same thing as -- don't get me going on a rant,



1 but texting, right? Texting, which phones are never allowed  
2 at our dinner table, and they are still not allowed at our  
3 dinner table for the same reason. So the same thing applies  
4 to you with the note-taking. That is the attorneys' concern.

5 And I can tell you personally, back when I was an  
6 undergrad, I started out in the hard sciences. And I was  
7 taking this one chemistry class that was really, really  
8 tough. And I was so involved in taking notes to make sure I  
9 could really remember everything that I don't think I ever  
10 remembered what my professor looked like. That is not good,  
11 not in this situation.

12 So don't let the note-taking distract you from being  
13 attentive. When you leave from recesses, as I said, leave  
14 them back there. Whether or not you decide to take notes,  
15 you should rely on your own memory of the evidence. Notes  
16 are only there to help assist that memory. You should never  
17 be overly influenced by your notes or those of your fellow  
18 jurors.

19 All right. Let's talk a little bit about procedure and  
20 what is going to happen next. The next phase of the trial  
21 will now begin. First, each side has the ability to make an  
22 opening statement. Remember, the attorneys' statements are  
23 not evidence. And opening statement is not evidence. But it  
24 is simply an outline to help you understand what the party  
25 expects the evidence will show. Legally, a party is not

1 required to make an opening statement.

2 The government then begins by calling witnesses to the  
3 stand, presenting evidence. Counsel for the defense has the  
4 ability to cross-examine. Then, once the government's  
5 evidence is all complete, if the defendant chooses to offer  
6 evidence, they will call witnesses. Counsel for the  
7 government has the ability to cross-examine those witnesses.

8 After all the evidence has been presented, I will give  
9 each of the jurors a packet of written instructions on the  
10 law that applies to the case. The attorneys have their final  
11 opportunity to argue to you what they believe the evidence  
12 has shown in what is known as closing arguments.

13 After that, then the 12 of you that will make up the final  
14 jury on this particular panel will go back into the jury room  
15 to begin deliberations on your verdict. So the one other  
16 question that is always asked of me is: Well, does that mean  
17 that 1 through 12 are the jurors, and 13 through 16 are the  
18 alternates? No.

19 The way we do it -- and hopefully all of you will be here  
20 at the very end of this case. But the way we do it is, we  
21 actually have that little juror box over there that we used  
22 to select juries a long time ago, purely randomly, from when  
23 they came into the courtroom. We will put all your names in  
24 there, and we will spin it around. And we pull out the four  
25 names, and those people will be the alternates at that point

1 in time. If you are an alternate, I will have further  
2 instructions to give you at that point. But that is a ways  
3 down the line.

4 All right. Let's talk about logistics. Let's talk about  
5 a few other things here in court. The trial day. When do we  
6 start? We start as close to 9 o'clock in the morning as  
7 possible. We go until noon. I like to maximize the daylight  
8 hours, especially as it starts getting later in the year  
9 here. We are in mid-October.

10 Who comes the farthest? Is anybody from Whatcom County  
11 still? Oh, two of you. Are you going to be able to take  
12 advantage of staying downtown?

13 JUROR: Yeah, I'm going to have to. I live on Lummi  
14 Island.

15 THE COURT: I know. That's awful. That's a long,  
16 long drive.

17 All right. Anybody from Snohomish County? Anybody from  
18 Skagit County?

19 JUROR: Kind of in between.

20 THE COURT: Okay. Kind of in between. All right.  
21 Well, as you all know, and if you don't know, Seattle has  
22 some of the worst traffic around in the United States. Part  
23 of it is because of all the water we get to enjoy. But that  
24 really creates an issue.

25 I try not to go later than 4:30. And what we do is we

1 squeeze our lunch hour in a little bit. The attorneys hate  
2 this, because they use that time for preparation and  
3 everything. But I would rather put the burden on them and  
4 make it easier for you.

5 So what I do is go until noon. Obviously, if there is a  
6 witness we are going to finish in five minutes, we will go a  
7 few minutes over, et cetera. But I'm talking on a typical  
8 day. And then we like to start up about 1:15 in the  
9 afternoon, all right? And we go until about 4:20, 4:30 at  
10 the latest. Again, if there is a witness that we are getting  
11 ready to finish up, for the convenience of that witness, we  
12 will go ahead and finish up and might keep you a little bit  
13 later.

14 But then that gives you just a little bit of a head start  
15 in trying to beat the traffic getting out of here. If you  
16 get out of here by 5:30 or 5:20, it becomes really difficult  
17 to get out of here. So we'll try to give you that little bit  
18 of a head start.

19 So what is the first thing that is going to happen when  
20 you get home tonight? Whoever lives with you is going to  
21 say: What happened? What's going on? Are you a juror?

22 Here is what I want you to tell them. Tell them, yes, I  
23 am a juror. Tell them it's a criminal case. Tell them what  
24 it is about, okay? And then say, and I can't talk to you  
25 about it at all. And then give them the reason why, all

1 right? Because they always want to know the reason why. And  
2 it makes sense once they understand the reason why, because,  
3 otherwise, they are going to be looking at you like, come on,  
4 what's going on, come on.

5 And the trouble is, see, that being human, the minute you  
6 say anything to them, they will give you their opinion. And  
7 they haven't been here. They haven't heard anything at all,  
8 right? And that could influence you one way or the other.  
9 And, again, that would not be fair to both sides.

10 So tell them exactly what I just said: Yes, I'm a juror.  
11 Yes, it's a criminal matter. Here are the charges brought by  
12 the government. And here is why we can't talk about it at  
13 all.

14 Tell them you are going to keep notes, and at the end, you  
15 will sit down with them and read all your notes to them,  
16 you'll discuss anything that they want, answer any other  
17 questions. But in the meantime, out of fairness to the  
18 parties and doing your duty, your duty as an impartial juror,  
19 you are just not going to be able to talk to them about it.

20 A couple other things. I told you earlier, when we took  
21 our break, wear your juror badge every time you come into the  
22 courthouse. So the minute you clear downstairs, the security  
23 area where the court security officers are down there, put  
24 your juror badge on so that everybody knows that you are a  
25 juror.

1       You are going to be riding up and down the elevators. You  
2       heard that long list of witness names that was read off by  
3       both sides. You don't know any of them. Conversely, they  
4       don't know any of you. So should you be in the same common  
5       areas, I want all the witnesses to be aware -- and I have  
6       told the attorneys, make sure the witnesses are aware, if  
7       they see anyone wearing a juror badge, it could be one of our  
8       jurors, so be quiet at that point in time so you are not  
9       accidentally exposed to anything.

10       All right. You are not allowed to bring any food or drink  
11       into the courthouse. However, you can -- Laurie, can they  
12       bring bottled water in?

13       THE CLERK: They can. And, actually, I think, as  
14       jurors, they can bring in their lunch. And if they have a  
15       problem, I can take care of it.

16       THE COURT: Okay. All right. So if any of you would  
17       like to have water with you for the session, bring it in a  
18       closed container, something that won't spill out here and  
19       stuff. And that's perfectly fine.

20       Cell phones. Does anyone not have a cell phone? Even all  
21       of you old guys have cell phones, huh? All right. You may  
22       not know how to use all the features, but you have them. All  
23       right. Yes, I know.

24       Okay. Cell phones. Cell phones are indispensable  
25       nowadays. But we don't like them ringing in the courtroom.

1 In fact, when we moved over here, all of the judges agreed  
2 that there would be a \$100 fine if your phone goes off in the  
3 courtroom.

4 You will see a sign back in the jury room when you come  
5 out, right on the wall, that says: Turn off your cell  
6 phones. When do they go off? At 9:05, after we start in  
7 session, and at usually about 1:25, when we start the  
8 afternoon session, because that's when you have been using  
9 your phone.

10 Also, smartphones, most of them have WiFi. All of our  
11 electronics are run through our court clerk at her computer,  
12 everything, including the lights and everything else in the  
13 courtroom, including the microphones. She is able to turn  
14 them up, turn them down, everything.

15 If your phone is not off, if it is simply on vibrate, you  
16 will hear feedback every now and then. Some weird stuff  
17 happens. So I need you to turn them off, all right? During  
18 the breaks, and especially during the lunch hour, yes, feel  
19 free to check them if you want. But you need to keep them  
20 off. It's just like an airplane. It's going to crash that  
21 747. If you have your cell phone on, it will crash our  
22 courtroom, all right? So turn the thing off when you come  
23 out here.

24 The chairs that you are in, for the two of you sitting on  
25 the end, it may not be the most comfortable. But, again, we

1 will try to work out the best thing that we possibly can. If  
2 any of you would feel more comfortable in a different seat,  
3 just let us know. Your juror number doesn't really matter  
4 anymore, right? Your order doesn't matter anymore, since we  
5 do the random thing anyway at the end. It won't make any  
6 difference.

7 If one of you feels that maybe being on the end -- my  
8 wife, for example, every time we go to a movie theater, likes  
9 to sit on the outside edge, because, she says, my legs are so  
10 long, I have to stretch them out. She can't stretch them out  
11 anywhere else. No, I don't think so. But it's just some  
12 sort of mind-set. It just makes her feel more comfortable.

13 If you are the same way, we could try to do the same  
14 thing, try to make it easier. But if any of you have any  
15 issues with a knee or back or anything else like that, let us  
16 know. If it would make it better for you to sit on the end  
17 or in the back, if you could stand up or do something like  
18 that, we could always accommodate that as well.

19 All right. Logistically, I think I have gone through  
20 about everything I needed to say. Do any of you have any  
21 questions of me about anything that I have said, any of the  
22 instructions that I have gone through, anything about your  
23 duty as jurors?

24 Yes, ma'am.

25 JUROR: The schedule, is it a Monday through Friday



1 schedule?

2 THE COURT: Oh, good. Yes. Thank you. We are  
3 trying to maximize the amount of time for you. And there are  
4 some things that I just can't put off for a long time,  
5 sentencings and another matters, other cases and stuff. So  
6 what we have done is we have kind of piled them all into  
7 certain days. And what we will do is, we will let you know.  
8 At the beginning of each week, we will let you know what  
9 days.

10 This week, we are going all through Friday. But I will  
11 let you know at the very beginning of the week whether that  
12 following Friday is going to be a sentencing day or not going  
13 to be a sentencing day. And there is also a holiday in  
14 there. Of course there would be. So we will talk about  
15 those things logistically as we get there.

16 I think you were trying to set up your deposition and  
17 stuff. What we will do is, I will get together with Laurie,  
18 and we will look at all the dates and stuff. So we will give  
19 you that tomorrow morning to help facilitate with your  
20 attorneys in terms of what dates might make the most sense.

21 JUROR: I have another issue also for Friday. I have  
22 been advised by my attorneys that typically Fridays are off.  
23 So they scheduled the last round of interviews with some  
24 contractors. We did some earlier this week, yesterday. We  
25 would do the rest on Friday. So it could be a potential

1 problem.

2 THE COURT: Okay. Well, unfortunately, I think this  
3 is going to take precedence over anything. If you need a  
4 note from me or a phone call from me to one of the attorneys,  
5 I am more than willing to do that as well.

6 JUROR: I'm trying to make it work.

7 THE COURT: All right. Any other questions from any  
8 one of you?

9 Yes, ma'am.

10 JUROR: Is there somebody that can help me find a  
11 place to, like, stay?

12 THE COURT: We are not just going to turn you loose  
13 downtown and say, go find your accommodations, no.

14 JUROR: Well, I tried, but there's a convention going  
15 on.

16 THE COURT: No, no. You work with Jeff or Renee  
17 downstairs. And we have certain hotels that do this all the  
18 time down here.

19 JUROR: Oh. Okay.

20 THE COURT: Yes. And they are not very far away.  
21 They are great. They have happy hour.

22 All right. There is another question?

23 JUROR: Yeah. Where do we first report in the  
24 morning?

25 THE COURT: All right. There we go. Now that you

1 are the jurors on this particular case, you do not need to go  
2 down to the jury room for anything. Well, I guess that is  
3 not true. They need to turn in some of the slips to Jeff.  
4 But aside from that, there really is no need for you to go  
5 down to the jury room anymore.

6 We are on the 13th floor. There are two courtrooms per  
7 floor. The building is oriented north, south, west, east.  
8 So mountains this way, water. Pike Place Market is that way.  
9 So when you come up the elevators, you just go this way,  
10 Judge Martinez. Judge Jones is on the other side.

11 When you get off the elevators, you will notice there is a  
12 door on that corner over there. So it's the southeast  
13 corner. There is a door. That door will have a little key  
14 pad like that one. See that little black box there? Because  
15 everything here is run by those little black boxes that allow  
16 you to open the doors. Otherwise, you can't get in.

17 Each one of you is going to get a key card that allows you  
18 to access that door on the outside. And then, as you walk  
19 down -- you see that hallway right behind these gentlemen  
20 over here? You will walk down that hallway, make a left  
21 turn, and, again, with your key card, go right into the jury  
22 room. All of our breaks will be taken -- every time we  
23 break, you will be asked to step back in the jury room. You  
24 will be excused from there.

25 Now, the jury room is designed for 12 people. Sixteen is

1 a lot more than 12. And there's two bathrooms in there.  
2 There's a coffee maker in there. There's a small  
3 refrigerator in there and that stuff. But it's tight. It's  
4 tight even for 12. It's going to be tight for 16. So you  
5 are all going to get to know each other pretty well.

6 But I promise you this, and I have told the attorneys this  
7 on multiple occasions, we will minimize the amount of time  
8 you spend back there, because I know what it's like being in  
9 that kind of cramped little quarters with this number of  
10 people. So we will try to keep our breaks exactly what we  
11 say they are and bring you out when we need to.

12 Now, there will be times when I may need to take up  
13 something with the attorneys on the record outside your  
14 presence. And I could either ask all of you to step back in  
15 there, or we tend to do it during the break itself. So if we  
16 are delayed a little bit, usually that is what we are trying  
17 to do. So we are trying to take care of some legal matter  
18 that doesn't involve you. We will just go ahead and do it  
19 out here on the record and then bring you out. But I will  
20 try to minimize that as much as possible.

21 So when you come up in the morning, you don't have to go  
22 down to the jury room. Come straight up, through the door,  
23 all the way down the hall, into that jury room. When all of  
24 you are there, there is a little buzzer, and Ms. Cuaresma  
25 will show you exactly what to do to advise us that you are

1 all here, because we assume that if someone isn't here in  
2 time, you are just stuck in traffic somewhere. And we wait.  
3 And everybody waits.

4 So if that were to happen, and you are stuck somewhere,  
5 use that cell phone and give us a call. She will give you  
6 the phone number. Call the courtroom, call chambers, and  
7 say, I'm stuck, I'm stuck, there is a traffic accident, I'm  
8 on the way. And then we will see what we do at that point in  
9 time.

10 If -- hopefully this will not happen, ever come up, but if  
11 for whatever reason you are just not able to come back,  
12 something happens, you get sick, you get hurt, anything,  
13 again, you've got to let us know, because, otherwise, we are  
14 assuming you are on your way, and everybody is sitting and  
15 waiting for you.

16 All right. Any other questions? Oh, the chairs that you  
17 are in, I was going to tell you, they kind of rock back and  
18 forth a little bit. The arms adjust. If you kind of pull  
19 back, you can kind of pull them back, and they kind of move  
20 and stuff. I want you to fix them to your liking, and then I  
21 want you to just leave them alone. Don't play with them  
22 anymore, all right? So just fix them to your liking, just so  
23 that they feel comfortable.

24 The monitors that we have, again, with evidence -- you  
25 will see some items of evidence that may be shown to the

1 witness on their monitor, the attorneys' monitor over there,  
2 and hopefully on your monitor. If there is ever any problem  
3 with any of your monitors, raise your hand and let me know.

4 When an exhibit is going to be identified, you may have  
5 color bars on your monitor, all right? It won't show on  
6 yours. It will show on ours. And then once the court makes  
7 a ruling, they will clear it. It will be published. That is  
8 the technical term. And then that means that you will get to  
9 see it.

10 However, every now and then, being electronic gizmos, they  
11 can go out. If something happens to them, let me know. Let  
12 me know if there are any issues with not being able to see  
13 it. Some of them are sometimes giving up the ghost,  
14 flickering or whatever. Let us know, and then we can have  
15 IT, assuming we have any IT people working, and we can have  
16 them try to fix that between now and the next session.

17 All right. Any other questions from any of you?

18 Okay. We are going to let you go, because tomorrow  
19 morning we will start openings. I don't like to split up  
20 openings. I like both sides to be able to give their  
21 openings. We are going to give openings in the morning and  
22 then start right into the trial itself, all right?

23 So wear comfortable clothing. No one goes in that jury  
24 room when you are here. So I don't know a woman that would  
25 actually do this, but you can leave your purse back there.

1 It will be okay. You can leave coats and stuff back there.  
2 No one is going to go back there when we are in session.

3 All right. Other than that, have a great evening.

4 Madam Clerk, do you need anything else from them?

5 THE CLERK: I will chat with them for just a few  
6 minutes back there.

7 THE COURT: All right. Let me have all of you,  
8 please, retire to the jury room. You will be excused from  
9 there. We will see you tomorrow morning.

10 (Jury leaves courtroom.)

11 THE COURT: Counsel, is there anything that we need  
12 to take up at all today?

13 MR. FRANZE-NAKAMURA: Your Honor, I just had one  
14 logistical issue. Tomorrow, during the opening, in place of  
15 using poster boards, we were hoping to use a TV monitor and  
16 put it in the middle of the courtroom, in the well.

17 THE COURT: Yes. And what we will do is, we will go  
18 ahead and let you do your opening with a monitor.

19 And the defense is going to give an opening, right? You  
20 both are going to split it?

21 MR. CARPENTER: Yes.

22 THE COURT: Then we will take just a real short break  
23 and remove the monitor and let the defense do theirs.

24 MR. CARPENTER: And I'll set up my easels for my  
25 poster boards at that time.

1 MR. ZULAUF: Your Honor, the problem is always that  
2 of having a monitor in front of the defense table and our not  
3 being able to see it.

4 THE COURT: And I think you will be able to see  
5 anything that is on the monitor on your screen as well.

6 MR. ZULAUF: Correct.

7 THE COURT: And we will have that large monitor in  
8 the back, Mr. Zulauf. That will be on as well.

9 MR. ZULAUF: That's fine.

10 THE COURT: And please feel free to move around if  
11 you want a better view, okay?

12 MR. ZULAUF: Okay.

13 THE COURT: All right. Then if I could have everyone  
14 maybe be here five minutes to 9:00, ready to go. We will see  
15 you all tomorrow morning.

16 (Proceedings adjourned.)  
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## C E R T I F I C A T E

I, Kari McGrath, CCR, CRR, RMR, Official Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this April 23, 2014.

/S/ KARI McGRATH

Kari McGrath, CCR, CRR, RMR

Official Court Reporter